

REMARKS

Claims 1-8 were rejected under 35 USC 112, first paragraph. The rejection is traversed. In fact, the examiner, in the 102(b) rejection, detailed below, construed Tollette face material as single sheet having two layers.

A sheet can be, among others, film or glass. *See, e.g.*, the Random House Dictionary of the English Language, attached hereto as ATTACHMENT. A film such as multilayer film or a glass is well known to one skilled in the art as having multilayers. Accordingly, it is common usage for the term "sheet" to indicate a structure having more than one layer. There is also ample support in the specification for applicants' use of "single sheet" to refer to a face material having a first layer and a second layer (*see, e.g.*, page 6, line 24 through page 7, line 17; page 8, lines 1 to 18; and Figures 1 and 2).

Claim 25 was rejected under 35 USC 112, first paragraph, for lack of antecedent basis. The rejection is submitted to be now moot for the amended claim 25 recites a second sheet of face material.

Claims 1-2,4-6, 8, 11, 18-19, 21-24, 27-28, and 31-32 were rejected under 35USC 102(b) over Tollette. The rejection is traversed for the following reasons.

Tollette discloses that the paper, adhered to the foam (*see, e.g.*, abstract), adds to the body (of the label) and provides a reverse printing on the underside of the film (*see, e.g.*, column 3, lines 24-30).

As to claims 1, 11, and 31-32, the examiner construed Tollette as having a face material (FIG. 2, ref. numeral 18) being a single sheet having first layer (ref. numeral 18, which is paper) and a second layer 20 (which is film). If the paper is face material, it cannot have two layers. If the film is the face material, it does not laminated to the insulating layer. Applicants' claims require that the face material be laminated to the insulating layer.

Tollette expressly discloses layer 18 as paper, paper does not melt and as a consequence has no melting temperature. Therefore, Tollette cannot and does not identically or inherently *describe* (the word used in 102(b)) the claimed invention, which requires two layers having different melting temperatures.

Applicants' amended claims 11 and 31 specifically require that the face material be (*not comprise*) film or fabric and further distinguish over Tollette.

Though claims 2 and 6 cannot be anticipated by Tollette, as discussed above, for they also require that two layers have different melting temperatures, in a good faith intent to advance the prosecution, applicants amended claim 2 to delete the recitation of paper.

The examiner then alleges that the Tollette face material is paper *or* film. As discussed above, the examiner construed Tollette as having a face material (FIG. 2, ref. numeral 18) being a single sheet having first layer (ref. numeral 18, which is paper) and a second layer 20 (which is film). To reject claims 2 and 6, the examiner changed the interpretation and construed the film (20) is the face material. It is the film or the paper, but not both. Assuming, *arguendo*, Tollette can be construed both ways, applicants submit the film does not laminate to the insulating layer. Applicants' claims 2 and 6 call for face material laminated to the insulating layer. Nor does the paper layer have a melting point.

In examiner's analysis of Tollette, the paper layer (18) is construed as the face material. Then, the film cannot be the face material that also adheres to the foam.

As to claim 4, applicants submit that the mere presence of an ink layer (layer 16) in Tollette does not anticipate that a printable coating is present on the face material because ink is not a coating.

As to claim 7, the examiner now construed the paper (18), not the film (20), as face material and alleged that layer 18 is modified on the surface facing away from the thermal insulating layer to facilitate printing. Applicants submit that Tollette discloses that the ink is applied to the *underside* of the film 12 prior to its adhesion to the layer 18 (col. 4, lines 9-10 and 14-16; *see also*, above discussion). Therefore, the examiner was incorrect in alleging that layer 18 is modified to facilitate printing for printing is not on layer 18.

Additionally, Tollette discloses that the printing is on the face of layer 12 facing *toward* the insulating layer and not away from the insulating layer as required in claim 7. Furthermore, the ink in Tollette is located on the interior of the "laminate" (layers 12-20). Consequently, the surface (i.e. the outer boundary) of the face material of Tollette is not modified to facilitate printing.

As to claim 8, the examiner construed layer 18 of Tollette as being modified on the surface facing away from the thermal insulating layer to facilitate bonding to another surface to facilitate bonding to another surface. Applicants submit that the

examiner erred because the adhesive layer 14 is applied to the *underside of the film layer 12* (see, e.g., col. 4, lines 9-10), not on the surface of the face material.

Applicants noted that the examiner did not specifically reject claims 18-19.

As to claim 21, the examiner construed the Tollette face material to include the paper layer 18 and adhesive layer 20 as the second layer. The examiner not only disregarded all other layers and counted layers out of sequence, but also ignored the limitation that the second layer of claim 21 (second layer is between the first layer and the insulating layer). Also as discussed above, paper does not have a melting point.

As to claim 22, the examiner construed Tollette layer 28 (a releasable backer) as an additional face material. Applicants submit that a releasable backer is not a face material. Applicants' specification (page 10, lines 5-16) specifically discloses that a release liner (reference numeral 28) is outside the face material and is not the face material itself. It is noted that a face material becomes the face of a label when the label is applied to, for example, a container. A release liner is *released* when applied to a subject thereby disappearing from the label.

FIG. 1 of applicants' specification also discloses that the face material 20 consists of layers 22 and 24, but does not include the adhesive layer 26 and the release liner 28. Applicants also note that claims 23 and 24 are consistent in the interpretation that the adhesive layer 26 and the releasable liner 28 are considered separate from and in addition to the face material. However, to address the examiner's specific rejection, applicants amend claim 22 to recite that the face material is not releasable.

As to claim 23, the examiner construed Tollette as disclosing an adhesive primer (layer 14) applied to the surface of the face material *facing away* from the thermal insulating layer. Applicants submit that the examiner ignored other adhesive layers 20 and 22 and erred because Tollette FIG. 2 shows that layers 14, 20, and 22 are applied to the *underside* of the film (discussed above), the paper (18), and the releasable backer (28), each is facing toward the insulating layer and not away from it.

As to claim 27 and 31, the examiner construed Tollette FIG. 5 as showing two sheets of face material sealed together along the top, side and bottom edges. Applicants submit that the examiner erred in interpreting FIG. 5 because Tollette specifically discloses (col. 7, lines 62-68) that the film is 42, the paper insert is 48,

and the foam is 52. FIG. 5 illustrates that a single sheet of face material 42 is adhered to the foam layer 52 and a *second* sheet of face material is *not* present. It is clear that the insulating layer is *not* laminated between two sheets of face material as required in claims 27 and 31.

Furthermore, Tollette discloses use of a heavy grade paper with superior wet strength to overcome the effects of water seeping into the body of the label (*see, e.g.*, column 3, lines 33-53). Such disclosure is a compelling suggestion that the edges of Tollette label cannot be and are not sealed as required in applicants' claims.

In other words, Tollette appears to lead one skilled in the art away from applicants' claims 27 and 31.

As to claim 28, the examiner misinterpreted Tollette as disclosing that the thermal insulating layer is laminated to at least one sheet of coextruded film comprising a first layer and a second layer because Tollette insulating layer 20 (foam), as the examiner note above, is adhered to the paper (18). Paper is not a coextruded film. Applicants also submit that claim 28 depends from claim 27 that requires two sheets of face material sealed together so that fluid cannot penetrate the edges of the insulating label. Tollette does not disclose that two sheets of face material are sealed together.

Claim 3 was rejected under 35 USC 103(a) over Tollette and Keiser. The rejection is traversed for the following reasons.

First, neither Tollette, nor Keiser, nor combinations of Tollette and Keiser discloses or suggest a face material having two layers, which have two different melting temperatures.

Secondly, in the four corners of Keiser, Keiser does not disclose or even suggest an insulating label. As such, applicants submits that Keiser cannot and does not provide motivation to modify Tollette thereby providing the elements missing in Tolltte to arrive applicants' claims.

Claim 20 was rejected under 35 USC 103(a) over Tollette and Yamada. The rejection is submitted to be in error because Yamada does not disclose or suggest an insulating stock and cannot provide motivation for modifying Tollette. Even if Yamada remotely relates to an insulating stock, it does not suggest the elements missing in Tollette (claim 1, two layers having different melting points or claim 31, the face material is film or fabric).

Claims 27-30 were rejected under 35 USC 103(a) over Tollette and Keiser. The rejection is also traversed.

Applicants note that the limitation of claims 27-30 includes that the edges of the sheets of face material are sealed together so that fluid cannot penetrate the edges of the insulating label. The limitation is not disclosed or suggested in either Tollette or Keiser. Therefore combining these references cannot render these claims obvious. The examiner pointed to Tollette FIG. 2 to indicate that "face materials 18, 20 and 26, 28" [sic] are sealed to the insulating layer throughout the area of the label. Applicants submit that the face materials identified by the examiner are not in contact and therefore *cannot* be construed as being sealed together as required in applicants' claims. Furthermore, while the face materials may be sealed to the insulating layer over the area of the label, they are not disclosed or suggested in FIG. 2 of Tollette to be sealed together over the thickness of the edge of layer 20, where fluid can penetrate the insulating layer.

The examiner repeated rejection of claims 34-35 over Tollette and McFall merely because McFall teaches that the film of the first and second sheet is axially oriented polyester film for the purpose of adding strength and/or dimensional stability to the substrate. Applicants submit that the substrate in McFall is polymer-coated paper (*see, e.g.*, column 4, lines 37-43). There is no disclosure or suggestion in McFall that the polyester films can function for the purpose of adding strength and/or dimensional stability to the foam of Tollette. Applicants also submit that McFall discloses a thermal-*reactive* label and *not* an insulating label.

Respectfully submitted,



Lucas K. Shay
Attorney for Applicants
Registration No. 34,724
Telephone: 302-992-6514
Facsimile: 302-992-3257

Dated: May 10, 2005